REPORTABLE

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6993/2003

Date of Decision: February 1, 2007

M/S.M.G.SHAHANI & CO.LTD. ..... Petitioner

Through Mr. Gulshan Chawla, Advocate.

versus

LABOUR COMMISSIONER,DELHI ..... Respondent

Through Ms. Shubhm Sinha for
Mr.V.K.Tandon, Advocate for respondent No.1.
Mr. Rajesh Bhatia, Advocate for respondent-workman.

CORAM:

HON'BLE MS. JUSTICE REKHA SHARMA

1. Whether Reporters of the Local Papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

REKHA SHARMA, J.

A.B.Khilani joined the service of M/s.M.G.Shahani & Co. on 1.2.60 as Assistant Manager and continued till 18.12.89 when he was dismissed from service after he was found guilty on charges of embezzlement. Feeling aggrieved by the order of his dismissal he

raised an industrial dispute which was referred to an Industrial Tribunal for adjudication. The terms of reference were as under : -

> " Whether the dismissal of services of Shri A.B.Khilani is illegal and / or unjustified and if so, what relief is he entitled and what directions are necessary in this respect.

The Industrial Tribunal vide its order dated 29.11.2002 found the order of dismissal to be unjustified. Basing itself on Rule 16 of the Rules and Regulations governing the conditions of service between the employees and the employer, the Tribunal held that the workman whose date of birth was 24.11.35 had attained the age of superannuation on the date it came to pass the order holding his dismissal to be unjustified. Therefore, instead of ordering his reinstatement the management was directed to give all consequential benefits to him, i.e., the wages from the date of his dismissal till the date he attained the superannuation alongwith all the retiral benefits.

Armed with the order of the Industrial Tribunal, A.B.Khilani moved an application before the Assistant/Deputy Labour Commissioner under Section 33(c)(1) of the Industrial Disputes Act, 1947 seeking implementation of the award passed in his favour. The Management contested the application and filed its reply. It was willing to pay wages and benefits calculated from the date of termination till the age of superannuation which according to it was 55 years. This was not acceptable to the workman who wanted his

wages to be calculated till he attained the age of 60 years. The Deputy Labour Commissioner agreed with the workman and sent a communication dated 19.9.2003 to District Collection Officer (Collector) to recover a sum of Rs.3,08,076/- from the Management as arrears of land revenue. Consequent thereto, the Management received a communication from Assistant Collector and Tehsildar dated 14.10.2003 calling upon it to pay the aforesaid amount within 15 days from the date of service of the notice. The Management is aggrieved by both these orders. Hence, this writ petition.

It was submitted by the Management that in terms of Rule 16 of the Conditions of Service the workman attained the age of superannuation at the age of 55 years and therefore the order of the Deputy Labour Commissioner directing it to pay the wages calculated upto the age of 60 years was unjustified and consequently the order of the Assistant Collector and Tehsildar dated 14.10.2003 was also not sustainable.

It is not disputed that the petitioner has been paid wages and other benefits calculated upto the age of 55 years. Therefore, the only question which arises for consideration is whether the Deputy Labour Commissioner and then the Assistant Collector and Tehsildar were justified in directing the Management to pay a sum of Rs.3,08,076/- which amount has been calculated by taking his age of

superannuation as 60 years. It is relevant in this context to have a look at Rule 16 of the Conditions of Service between the employer and the employees. This is how it reads:-

> Superannuation age of the workman is fixed at 55 years extendable upto 60 years, subject to the satisfaction of the employer that he will be able to perform his duty after attaining the superannuation age.

It is apparent from a bare look of the above rule that the age of superannuation of a workman is 55 years. It is ofcourse extendable by five years but only upon the satisfaction of the employer that the workman will be able to perform his duties “after attaining the superannuation age”. The use of the expression “after attaining the superannuation age” goes to show that so far as the age of superannuation is concerned it is 55 years but if a workman is continued in service even after his superannuation till 60 years it has to be on the satisfaction of the employer that he will be able to perform his duties inspite of his having attained the age of superannuation. The Tribunal in its order dated 29.11.2002 has directed the Management to pay to the workman wages from the date of dismissal till the date of superannuation. The said order of the Tribunal cannot be given any other meaning except this that workman was to be paid wages till he attained the age of 55 years. It will be relevant to mention here that the reference which was made to the Tribunal was “whether the dismissal of the workman was illegal /

unjustified." The question whether he could continue in service beyond the age of 55 years was not an issue before the Tribunal. It could at best be the subject matter of another industrial dispute but so far as the present order of the Tribunal is concerned it cannot be faulted.

It has been held by the Division Bench of this court in **M/s Colcom Plastic Ltd. and others Vs. Union Of India & others, 1997(1) LLJ 1230** that the proceedings under Section 33 (c) (1) are in the nature of execution proceedings and the executive therefore cannot go beyond the Award for which execution is sought before it. In view of this judgment and for what has been held above, by me, the order of the Deputy Labour Commissioner dated 19.9.2003 granting arrears of salary and other benefits till the age of 60 years was outside the scope of its power under Section 33(c)(1) of the Industrial Disputes Act. Accordingly, the orders dated 19.9.2003 and 14.10.2003 are quashed. The writ-petition is allowed.

REKHA SHARMA, J

FEBRUARY 1, 2007
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